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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,789	07/05/2005	Norbert Fuchs	SONN:063US/10415465	7343
32425 7590 01/09/2008 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701			EXAMINER CLARK, AMY LYNN	
			ART UNIT 1655	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,789	Applicant(s) FUCHS ET AL.	
	Examiner Amy L. Clark	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on 4 October 2007 with the amendment of claims 25 and 30, and newly added claims 36-38.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 25-38 are currently pending and currently under examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Amended claims 25-35 and newly added claims 36-38 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Fuchs (A, US Patent Number: 5,773,681),

in view of Beckman (U, "Pharmacology: The Nature, Action and Use of Drugs"). Newly applied as necessitated by amendment.

Fuchs teaches a method of germinating seeds of wheat, which reads on wheat seedlings, in an electrolyte solution to provide electrolyte enriched wheat embryos (See abstract, column 3, lines 1-6 and lines 47-54 and the Examples provided), which reads on a preparation comprising wheat seedlings and the limitations of newly added claim 38. Fuchs further teaches that the electrolyte-enriched plant embryos may be washed, dried and further processed, wherein they may be formulated into fresh food, or food supplements in the form of mueslis, chewing tablets, capsules or liquids (See column 4, lines 7-14), which reads on the limitations of newly added claims 36 and 37. Fuchs further teaches that these embryos may be used to treat or prevent nutritionally caused or nutritionally dependent diseases in humans and animals, such as hypertension with elevated blood lipid and triglyceride concentrations, wherein the treatment or prevention comprises administering the plant embryo or the processed products derived from the plant embryo. Fuchs further teaches that the amount to be administered is highly dependent on the disease (or stage of the disease) to be treated or prevented and should be sufficient to achieve a suitable effectiveness (See column 4, lines 16-32).

Although Fuchs does not teach that a preparation comprising wheat seedlings or processed wheat seedlings, wherein the wheat seedlings are enriched with electrolytes results in reduction of blood cholesterol concentration, wherein administration of the preparation results in the reduction of low-density lipoprotein (LDL) concentration in the person, wherein administration of the preparation results in a reduced probability of

atherosclerosis, wherein administration of the preparation results in proliferation of T-lymphocytes in the person, wherein the preparation results in proliferation of CD3+-specific immune cells in the person, wherein administration of the preparation results in the proliferation of CD3+/CD4+-specific immune cells (helper cells) in the person, wherein administration of the preparation results in proliferation of CD3-/CD16,56+-specific immune cells (natural killer cells) in the person, and wherein administration of the preparation results in proliferation of CD4+/CD8+-specific immune cells (suppressor cells), the claimed functional properties are intrinsic to the preparation taught by Fuchs because the ingredients and the route of administration for the delivery of the ingredients taught by Fuchs are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, a preparation comprising wheat seedlings or processed wheat seedlings, wherein the wheat seedlings are enriched with electrolytes, wherein administration of the preparation results in reduction of blood cholesterol concentration, wherein administration of the preparation results in the reduction of low-density lipoprotein (LDL) concentration, wherein administration of the preparation results in a reduced probability of atherosclerosis, wherein administration of the preparation results in proliferation of T-lymphocytes, wherein the preparation results in proliferation of CD3+-specific immune cells, wherein administration of the preparation results in the proliferation of CD3+/CD4+-specific immune cells (helper cells), wherein administration of the preparation results in proliferation of CD3-/CD16,56+-specific immune cells (natural killer cells), and wherein administration of the preparation results in proliferation

of CD4+/CD8+-specific immune cells (suppressor cells) is intrinsic to the composition taught by Fuchs.

Beckman teaches that based upon age, the dosage should be adjusted, that drug response will be somewhat different in the middle aged than in the young adult or middle-aged person and the presence of a debilitating disease in the elderly is a recognizable fact (See page 38 "Age").

Fuchs does not teach the exact method steps combined together as claimed by Applicant nor does Fuchs teach that the composition may be administered to a person who is geriatric. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to first obtain a preparation comprising wheat seedlings or processed wheat seedlings, wherein the wheat seedlings are enriched with electrolytes and administer the preparation to a person because at the time the invention was made, these steps were known in the art, as clearly taught by Fuchs and it would have been obvious to one of ordinary skill in the art at the time the invention was made to administer a preparation to a person who is geriatric if the person is in need of the medication, as was adjusting the amount of medication to be administered based upon age and disease, as clearly taught by Fuchs and Beckman. One would have been motivated to administer a preparation comprising wheat seedlings or processed wheat seedlings, wherein the wheat seedlings are enriched with electrolytes to a person and to administer the preparation to a person who is geriatric because the claimed ingredients can be consumed and are known to have beneficial properties for nutritionally caused or nutritionally dependent diseases in humans and animals, such as

hypertension with elevated blood lipid and triglyceride concentrations. Furthermore, one of ordinary skill in the art would have reasonable expectation of success in using such a preparation because the beneficial properties of the preparation are taught by the cited references, as is the same method of obtaining the preparation and the same method of using the preparation as claimed by Applicant.

Based upon the beneficial teachings of the cited references, the skill of one of ordinary skill in the art, and absent evidence to the contrary, there would have been a reasonable expectation of success to result in the claimed invention.

Accordingly, the claimed invention was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

No claims are allowed.

Response to Arguments

Applicant's arguments, see "Applicant Arguments/Remarks Made in an Amendment", filed 4 October 2007, with respect to the rejections of claims 25-35 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement and under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement have been fully considered and are persuasive in view of the newly amended claims provided by Applicant. Therefore, the rejection has been withdrawn based upon the amendments made to the claims by Applicant. However,

upon further consideration, a new ground(s) of rejection is made in view of Fuchs (A, US Patent Number: 5,773,681). Please see rejection above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571) 272-1310. The examiner can normally be reached on 8:30am - 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Amy L. Clark
AU 1655

Amy L. Clark
December 26, 2007



CHRISTOPHER R. TATE
PRIMARY EXAMINER